

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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USCA Docket Number:

USDC Docket Number : 04-cv-30176

Scott Stern

v.

University of Massachusetts, at Amherst, et al

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**CLERK'S CERTIFICATE**

I, Tony Anastas, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 12/28/04.

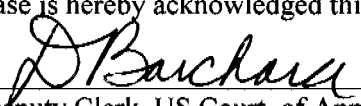
In testimony whereof, I hereunto set my hand and affix the seal of this Court on January 10, 2005.

Tony Anastas, Clerk of Court

By: 

Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 1/10/05.

  
Deputy Clerk, US Court of Appeals

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Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

APPEAL

**United States District Court  
District of Massachusetts (Worcester)  
CIVIL DOCKET FOR CASE #: 4:04-cv-30176-FDS**

Stern v. University of Massachusetts at Amherst Health  
Services et al  
Assigned to: Judge F. Dennis Saylor IV  
Cause: 28:1983 Civil Rights

Date Filed: 09/07/2004  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**  
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**Scott Stern, and other persons  
similarly situated in the  
Commonwealth of Massachusetts; and  
other persons similarly situated in the  
United States of America**

represented by **Scott Stern**  
400 West Main Street  
North Adams, MA 01247  
413-664-7805  
PRO SE

V.

**Defendant**  
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**University of Massachusetts at  
Amherst Health Services**

represented by **Brian W. Burke**  
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413-545-2204  
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*TERMINATED: 09/23/2004*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Geoffrey B. McCullough**  
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**Bernadette Melby, Director of Health  
Services**

represented by **Brian W. Burke**  
(See above for address)

*TERMINATED: 09/23/2004*  
*LEAD ATTORNEY*  
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**Geoffrey B. McCullough**  
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**Brian Burke, Associate Counsel,**  
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*Amherst*

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*TERMINATED: 09/23/2004*  
*LEAD ATTORNEY*  
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**Geoffrey B. McCullough**  
 (See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Massachusetts Board of Trustees**


represented by **Geoffrey B. McCullough**  
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*LEAD ATTORNEY*  
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**Massachusetts Board of Higher  
 Education**

represented by **Salvatore Giorlandino**  
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**Division of Health Care Finance and  
 Policy**

represented by **Salvatore Giorlandino**  
 (See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
09/07/2004	 1	MOTION/Application to Proceed without prepayment of fees and Affidavit (in forma pauperis) by Scott Stern.(Lindsay, Maurice) (Entered: 09/08/2004)

09/07/2004		Judge Kenneth P. Neiman : ORDER entered granting Ptf's 1 Motion/Application to Proceed without prepayment of fees (in forma pauperis) (Lindsay, Maurice) (Entered: 09/08/2004)
09/07/2004		COMPLAINT Filing fee: (WV)IFP receipt number N/A, filed by Scott Stern.(Lindsay, Maurice) Additional attachment(s) added on 9/8/2004 (Lindsay, Maurice). (Entered: 09/08/2004)
09/07/2004		Plaintiffs' Emergency MOTION for Temporary Restraining Order by Scott Stern.(Lindsay, Maurice) (Entered: 09/08/2004)
09/07/2004		Summons Issued as to Brian Burke, Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, Massachusetts Board of Trustees, Bernadette Melby, University of Massachusetts at Amherst Health Services. Summons delivered to U.S. Marshal for service.(Lindsay, Maurice) (Entered: 09/08/2004)
09/08/2004		Judge Michael A Ponsor : ORDER OF RECUSAL entered, case ordered transferred to U.S. District Court Worcester Division. See attached order for complete details.(Lindsay, Maurice) (Entered: 09/08/2004)
09/08/2004		Case transferred to Worcester Section. Original file and docket sheet sent to: United States District Court, Donoghue Federal Building, Clerk's Office, 595 Main Street, Worcester MA 01608. (Finn, Mary) (Entered: 09/08/2004)
09/10/2004		Case transferred in from Springfield Division. Case Number 04-30176. Case assigned to Judge F. Dennis Saylor. (Jones, Sherry) (Entered: 09/10/2004)
09/10/2004		Judge F. Dennis Saylor added. (Jones, Sherry) (Entered: 09/10/2004)
09/14/2004		EMERGENCY MOTION for Preliminary Injunction by Scott Stern. (Jones, Sherry) (Entered: 09/20/2004)
09/15/2004		NOTICE of Appearance by Geoffrey B. McCullough on behalf of Brian Burke, Massachusetts Board of Trustees, Bernadette Melby, University of Massachusetts at Amherst Health Services, c/s. (Hassett, Kathy) (Entered: 09/15/2004)
09/17/2004		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Motion Hearing held on 9/17/2004 re 4 MOTION for Temporary Restraining Order filed by Scott Stern, Telephone Conference held on 9/17/2004, Case called, Plaintiff (pro-se) and counsel for the dft appear by phone, Court hears arguments of plaintiff and counsel, Court puts ruling on the record, Court DENIES

		motion for TRO, Court sets further hearing for Preliminary injunction: Set Deadlines/Hearing as to <u>4</u> MOTION for Temporary Restraining Order:. Motion Hearing set for 9/23/2004 12:00 PM in Courtroom 2 before F. Dennis Saylor IV. (Court Reporter Kusa-Ryll.) (Castles, Martin) (Entered: 09/20/2004)
09/17/2004	●	Judge F. Dennis Saylor IV: Electronic ORDER entered denying <u>4</u> Motion for TRO. Motion denied during telephone conference this date. (Castles, Martin) (Entered: 09/20/2004)
09/20/2004	● <u>8</u>	AFFIDAVIT of Scott Stern in Support re <u>7</u> MOTION for Preliminary Injunction filed by Scott Stern. (Jones, Sherry) (Entered: 09/20/2004)
09/20/2004	● <u>9</u>	AFFIDAVIT of Scott Stern in Support re <u>7</u> MOTION for Preliminary Injunction filed by Scott Stern. (Jones, Sherry) (Entered: 09/20/2004)
09/21/2004	●	Set Deadlines as to <u>7</u> MOTION for Preliminary Injunction. Motion Hearing set for 9/23/2004 at 12:00PM in Courtroom 2 before F. Dennis Saylor IV. (cc/cl) (Castles, Martin) (Entered: 09/21/2004)
09/22/2004	● <u>10</u>	Opposition re <u>7</u> MOTION for Preliminary Injunction filed by Brian Burke, Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, Massachusetts Board of Trustees, Bernadette Melby, University of Massachusetts at Amherst Health Services. (Jones, Sherry) (Entered: 09/22/2004)
09/22/2004	● <u>11</u>	AFFIDAVIT of Thomas M. Mathers in Opposition re <u>7</u> MOTION for Preliminary Injunction filed by Brian Burke, Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, Massachusetts Board of Trustees, Bernadette Melby, University of Massachusetts at Amherst Health Services. (Jones, Sherry) (Entered: 09/22/2004)
09/22/2004	● <u>12</u>	AFFIDAVIT of Bernette A. Melby in Opposition re <u>7</u> MOTION for Preliminary Injunction filed by Brian Burke, Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, Massachusetts Board of Trustees, Bernadette Melby, University of Massachusetts at Amherst Health Services. (Jones, Sherry) (Entered: 09/22/2004)
09/23/2004	● <u>13</u>	NOTICE of Withdrawal of Appearance Attorney Brian W. Burke terminated. (Hassett, Kathy) (Entered: 09/23/2004)
09/23/2004	● <u>14</u>	MOTION to Amend <u>3</u> Complaint by Scott Stern, c/s.(Hassett, Kathy) (Entered: 09/23/2004)
09/23/2004	● <u>15</u>	MEMORANDUM OF LAW in Support re <u>7</u> MOTION for

		Preliminary Injunction filed by Scott Stern, c/s. (Attachments: # <u>1</u> Part B# <u>2</u> Part C)(Hassett, Kathy) (Entered: 09/23/2004)
09/23/2004	●	Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Motion Hearing held on 9/23/2004 re <u>7</u> MOTION for Preliminary Injunction filed by Scott Stern. Case called, Plaintiff (pro-se) and dft's counsel appear for hearing on motion for PI, Court hears arguments of parties, Court orders dft to file briefs by 9/28/04, Court takes motion under advisment. (Court Reporter Kusa-Ryll.) (Castles, Martin) (Entered: 09/24/2004)
09/27/2004	● <u>32</u>	APPENDIX/EXHIBIT re <u>7</u> MOTION for Preliminary Injunction by Scott Stern. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> )(Hassett, Kathy) Additional attachment(s) added on 10/19/2004 (Hassett, Kathy). (Entered: 10/15/2004)
09/28/2004	● <u>16</u>	Marshals return of service returned Executed as to Deft. Massachusetts Board of Trustees - served on 9/23/2004, answer due 10/13/2004. (Finn, Mary) Modified on 9/28/2004 (Finn, Mary). (Entered: 09/28/2004)
09/28/2004	● <u>17</u>	Marshals return of service Executed as to Deft. Division of Health Care Finance and Policy - served on 9/23/2004, answer due 10/13/2004. (Finn, Mary) (Entered: 09/28/2004)
09/28/2004	● <u>18</u>	Marshals return of service Executed as to Deft. Massachusetts Board of Higher Education - served on 9/23/2004, answer due 10/13/2004. (Finn, Mary) (Entered: 09/28/2004)
09/28/2004	● <u>19</u>	MOTION to Amend <u>3</u> Complaint by Scott Stern.(Jones, Sherry) (Entered: 09/28/2004)
09/28/2004	● <u>20</u>	MOTION to Modify named defendant's in complaint of September 6, 2004 by Scott Stern.(Jones, Sherry) (Entered: 09/28/2004)
09/28/2004	● <u>21</u>	MOTION to Sanction defendant's and defendant's counsel by Scott Stern.(Jones, Sherry) (Entered: 09/28/2004)
09/28/2004	● <u>22</u>	AFFIDAVIT of Scott Stern in Support re <u>20</u> MOTION to Modify named defendant's in complaint of September 6, 2004, <u>21</u> MOTION for Sanctions, <u>19</u> MOTION to Amend <u>3</u> Complaint filed by Scott Stern. (Jones, Sherry) (Entered: 09/28/2004)
09/29/2004	● <u>23</u>	Supplemental Opposition re <u>7</u> MOTION for Preliminary Injunction filed by Brian Burke, Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, Massachusetts Board of Trustees, Bernadette Melby, University of Massachusetts at Amherst

		Health Services, c/s. (Jones, Sherry) (Entered: 09/29/2004)
10/06/2004	<u>24</u>	Marshals return of service executed as to Brian Burke and Bernadette Melby - served on 10/5/2004. Answer due 10/25/2004. (Finn, Mary) (Entered: 10/06/2004)
10/13/2004	<u>25</u>	NOTICE of Appearance by Salvatore Giorlandino on behalf of Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, c/s. (Hassett, Kathy) (Entered: 10/13/2004)
10/13/2004	<u>26</u>	MOTION for Extension of Time to November 12, 2004 to File Answer re <u>3</u> Complaint by Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, c/s.(Hassett, Kathy) (Entered: 10/13/2004)
10/15/2004	<u>27</u>	Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>14</u> Motion to Amend. (cc/cl) (Castles, Martin) (Entered: 10/15/2004)
10/15/2004	<u>28</u>	Judge F. Dennis Saylor IV: Electronic ORDER entered denying <u>21</u> Motion for Sanctions. (cc/cl) (Castles, Martin) (Entered: 10/15/2004)
10/15/2004	<u>29</u>	Judge F. Dennis Saylor IV: Electronic MEMORANUM AND ORDER entered denying <u>7</u> Motion for Preliminary Injunction. (cc/cl) (Castles, Martin) (Entered: 10/15/2004)
10/15/2004	<u>30</u>	Judge F. Dennis Saylor IV: Electronic ORDER entered granting in part and denying in part <u>26</u> Motion for Extension of Time to Answer. (cc/cl) (Castles, Martin) (Entered: 10/15/2004)
10/15/2004	<u>31</u>	MOTION to Dismiss by Brian Burke, Massachusetts Board of Trustees, Bernadette Melby, University of Massachusetts at Amherst Health Services, c/s.(Hassett, Kathy) (Entered: 10/15/2004)
10/22/2004	<u>33</u>	MOTION to Consolidate all pending motions to Amend the Original Complaint of September 7, 2004 by Scott Stern.(Hassett, Kathy) (Entered: 10/22/2004)
10/22/2004	<u>34</u>	MOTION for Reconsideration re <u>29</u> Order on Motion for Preliminary Injunction by Scott Stern.(Hassett, Kathy) (Entered: 10/22/2004)
10/22/2004	<u>35</u>	NOTICE OF APPEAL as to <u>29</u> Order on Motion for Preliminary Injunction by Scott Stern. Filing fee not paid. \$ 0.0, receipt number NA NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 11/11/2004. (Hassett, Kathy) (Entered: 10/22/2004)



10/22/2004	<u>36</u>	MOTION for Recusal of Judge Dennis Saylor by Scott Stern. (Hassett, Kathy) (Entered: 10/22/2004)
10/22/2004	<u>37</u>	CERTIFICATE OF SERVICE by Scott Stern re <u>33</u> MOTION to Consolidate all pending motions to Amend the Original Complaint of September 7, 2004, <u>34</u> MOTION for Reconsideration re <u>29</u> Order on Motion for Preliminary Injunction, <u>35</u> Notice of Appeal,, <u>36</u> MOTION for Recusal. (Hassett, Kathy) (Entered: 10/22/2004)
10/27/2004	<u>38</u>	Letter/request (non-motion) from Geoffrey B. McCullough. (Jones, Sherry) (Entered: 10/27/2004)
10/27/2004	<u>39</u>	Certified and Transmitted Record on Appeal to US Court of Appeals re <u>35</u> Notice of Appeal, NOA #35 & document #29 (Ramos, Jeanette) (Entered: 10/27/2004)
11/01/2004	<u>40</u>	NOTICE by Brian Burke, Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, Massachusetts Board of Trustees, Bernadette Melby, University of Massachusetts at Amherst Health Services, c/s. (Jones, Sherry) (Entered: 11/01/2004)
11/04/2004	<u>41</u>	MOTION for Extension of Time for 30 days to File Response/Reply as to <u>31</u> MOTION to Dismiss by Scott Stern.(Hassett, Kathy) (Entered: 11/04/2004)
11/04/2004	<u>41</u>	Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>41</u> Motion for Extension of Time to File Response/Reply re <u>31</u> MOTION to Dismiss Responses due by 12/1/2004 (cc/cl) (Hassett, Kathy) (Entered: 11/04/2004)
11/05/2004	<u>42</u>	MOTION to Amend <u>3</u> Complaint by Scott Stern. (Attachments: # <u>1</u> Part 2# <u>2</u> Part 3)(Jones, Sherry) (Entered: 11/05/2004)
11/16/2004	<u>43</u>	MOTION to Dismiss plaintiff's consolidated complaint of all amendments by Division of Health Care Finance and Policy, Massachusetts Board of Higher Education, c/s.(Jones, Sherry) (Entered: 11/16/2004)
11/17/2004	<u>44</u>	USCA Case Number: 04-2474 assigned by First Circuit for <u>35</u> Notice of Appeal, filed by Scott Stern. (Ramos, Jeanette) (Entered: 11/17/2004)
12/01/2004	<u>45</u>	Opposition re <u>43</u> MOTION to Dismiss filed by Scott Stern, c/s. (Hassett, Kathy) (Entered: 12/01/2004)
12/03/2004	<u>46</u>	MOTION for Leave to File Reply Memorandum in Support of <u>43</u> by Division of Health Care Finance and Policy, Massachusetts Board of



		Higher Education and Getachew Habtehi-Yimer, c/s.(Hassett, Kathy) (Entered: 12/03/2004)
12/03/2004	●	Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>46</u> Motion for Leave to File. "MOTION ALLOWED, by the Court." (cc/cl) (Hassett, Kathy) (Entered: 12/03/2004)
12/10/2004	● <u>47</u>	Judge F. Dennis Saylor IV: Electronic ORDER entered denying <u>36</u> Motion for Recusal. (cc/cl) (Castles, Martin) (Entered: 12/10/2004)
12/10/2004	● <u>48</u>	Judge F. Dennis Saylor IV: Electronic ORDER entered denying <u>34</u> Motion for Reconsideration. (cc/cl) (Castles, Martin) (Entered: 12/10/2004)
12/10/2004	● <u>49</u>	ORDER of USCA as to <u>35</u> Notice of Appeal, filed by Scott Stern. This court has docketed plaintiff's appeal from the memorandum and order denying preliminary injunction entered on October 15, 2004 in CA No. 04-30176 (D. Mass.) as Appeal No. 04-2474. On October 22, 2004, plaintiff filed a motion for reconsideration. Pursuant to Fed. R. App. P. 4(a)(4)(A), the notice of appeal does not become effective until district court disposes of the Post-judgment motion. Therefore, appellant is directed to file a status report by December 31, 2004 and at thirty day intervals thereafter, informing this court of any action taken by the district court on the Post-judgment motion. See Order for further details. (Ramos, Jeanette) (Entered: 12/10/2004)
12/23/2004	● <u>50</u>	Judge F. Dennis Saylor IV: Electronic MEMORANDUM AND ORDER entered granting <u>31</u> Motion to Dismiss, denying <u>33</u> Motion, denying <u>42</u> Motion to Amend, granting <u>43</u> Motion to Dismiss, denying <u>19</u> Motion to Amend, denying <u>20</u> Motion for Modification. (cc/cl) (Castles, Martin) (Entered: 12/23/2004)
12/23/2004	● <u>51</u>	Judge F. Dennis Saylor IV: ORDER entered ORDER DISMISSING CASE. (cc/cl)(Castles, Martin) (Entered: 12/23/2004)
12/28/2004	● <u>52</u>	Letter/request (non-motion) from Scott Stern. (Hassett, Kathy) (Entered: 12/28/2004)
12/28/2004	● <u>53</u>	NOTICE OF APPEAL as to <u>51</u> Order Dismissing Case by Scott Stern. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 1/17/2005. (Hassett, Kathy) (Entered: 12/28/2004)